

I.

PARTIES

1. Plaintiff, Cajun Chickcan of Texas, LLP (“Texas Chickcan”), is a Texas limited liability partnership with its principal place of business at 1803 Cottage Landing Lane, Houston, Texas 77077.

2. Upon information and belief, Defendant, Academy, Ltd., d/b/a Academy Sports & Outdoors (“Academy”), is a Texas limited partnership having a principal place of business located at 1800 North Mason Road, Katy, Texas 77449. Its registered agent for the service of process is David E. Gochman, with a registered address at 1800 North Mason Road, Katy, Texas 77449. Upon information and belief, Academy does business in this District and sells the offending product in this district.

3. Upon information and belief, Defendant, Sell, Inc. (“Sell”) is a Texas corporation having a principal place of business at 1800 N. Mason Road, Katy, Texas 77449-2826. Upon information and belief, Sell is owned and controlled by Academy. Its registered agent for the service of process is Arthur Gochman at the registered address of 403 Westminster, Houston, Texas 77024. Upon information and belief, Sell does business in this District including by supplying the offending product to this District.

II.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-285.

5. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1338(a).

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b).

III.

PATENTS IN SUIT

7. On May 6, 2003, U.S. Patent No. 6,557,460, entitled “Apparatus for Roasting Fowl,” (“the ‘460 patent”) was duly and legally issued to inventor Kevin R. Hester. Texas Chickcan is owner of the ‘460 patent by assignment. A copy of the ‘460 patent is attached hereto as Exhibit A.

8. On January 7, 2003, U.S. Patent No. 6,503,551, entitled “Method for Roasting Fowl,” (“the ‘551 patent”) was duly and legally issued to inventor Kevin R. Hester. Texas Chickcan is owner of the ‘551 patent by assignment. A copy of the ‘551 patent is attached hereto as Exhibit B.

9. These patents cover a process and apparatus in which a beverage can is fitted into a wire frame and inserted into the central cavity of a fowl that has been cleaned and seasoned as desired. The wire frame holds the beverage can and the whole fowl in a substantially vertical position for roasting. The apparatus is employed by placing the frame, upon which is mounted the beverage can containing the desired liquid and the fowl to be roasted into a heat source, which may be an oven, a roaster, or the surface a barbeque grille. As the beverage heats during roasting, the flavor of the beverage in the beverage can is imparted to the fowl.

VI.

COUNT I

(Direct Infringement)

10. The allegations of each and every of the foregoing paragraphs are repeated and realleged as if set forth fully herein.

11. Upon information and belief, defendants Academy and Sell (collectively “the Academy entities”) have infringed and are presently infringing the ‘460 and ‘551 patents by making, using, selling, importing and/or offering to sell within the United States, and within this District an

apparatus, called the “Stainless–Steel Chicken Party Cooker” by the Academy entities, that employs the inventions of the ‘460 and ‘551 patents and will continue to do so unless enjoined by this Court.

12. Upon information and belief, the infringement by Academy and Sell has been willful and deliberate.

13. Texas Chickcan has been damaged as a result of the infringing activities of the Academy entities and will continue to be damaged unless such activities are preliminarily and permanently enjoined by this Court.

IV.

COUNT II

(Active Inducement of Infringement)

14. The allegations of each and every of the foregoing paragraphs above are repeated and realleged as if set forth fully herein.

15. Upon information and belief, the Academy entities have infringed and are presently infringing the ‘460 and ‘551 patents by actively inducing others to infringe the asserted patents within the United States, and within this District, and will continue to do so unless enjoined by this Court.

16. Upon information and belief, the Academy entities’ inducement of infringement has been willful and deliberate.

17. Texas Chickcan has been damaged as a result of the Academy entities’ infringing activities and will continue to be damaged unless such activities are preliminary and permanently enjoined.

V.

COUNT III

(Contributory Infringement)

18. The allegations of each and every of the foregoing paragraphs above are repeated and realleged as if set forth fully herein.

19. Upon information and belief, the Academy entities have infringed and are presently infringing the '460 and '551 patents by contributing to the infringement by others of the asserted patents within the United States, and within this District, and will continue to do so unless enjoined by this Court.

20. Upon information and belief, the Academy entities' contributory infringement has been willful and deliberate.

21. Texas Chickcan has been damaged as a result of the Academy entities' infringing activities and will continue to be damaged unless such activities are preliminary and permanently enjoined.

VI.

PRAYER FOR RELIEF

WHEREFORE, Texas Chickcan prays for judgment and relief including: (a) that the Academy entities have infringed the '460 and '551 patents; (b) both a preliminary and permanent injunction against the Academy entities' continued infringement of the '460 and '551 patents; (c) an accounting for damages resulting from the Academy entities' infringement and that the damages so ascertained be trebled because of the willful and deliberate nature of the defendants' conduct; (d) an assessment of interest on the damage so computed; (e) an award of Texas Chickcan's attorneys' fees and costs of this action pursuant to 35 U.S.C. § 285; and (f) such other and further relief as this Court

deems just and appropriate.

Respectfully submitted,

SETH & ASSOCIATES

Date: 1-14-05

By: 

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JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS CAJUN CHICKCAN OF TEXAS, LLP**DEFENDANTS** ACADEMY, LTD AND SELL, INC.(b) County of Residence of First Listed Plaintiff HARRIS
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed FORT BEND
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

SANDY SETH, SETH & ASSOCIATES
6750 WEST LOOP SOUTH, STE. 920,
BELLAIRE, TX 77401, TEL. 713 592-8500

Attorneys (If Known)

United States Courts
Southern District of Texas
FILED

JAN 14 2005

H-05 - 139

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ PLA ☐ DEF ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☒ PLA ☐ DEF ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Jdgm. <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) SOCIAL SECURITY <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

35 U.S.C. §§ 271 and 281-285.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

JS 44 Reverse (Rev. 12/96)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44**Authority For Civil Cover Sheet**

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b.) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.